

Lydia R. Pulley
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Virginia



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August 16, 2000

Mr. Joel H. Peck, Clerk
State Corporation Commission
Document Control Center
Post Office Box 2118
Richmond, Virginia 23216

Dear Mr. Peck:

Verizon Virginia Inc. ("Verizon Virginia") is in receipt of Petition for Declaratory Judgment and Conditional Petition for Arbitration or Alternative Petition for Dismissal of Cox Virginia Telecom, Inc. ("Cox"), filed on July 27, 2000.

Cox has filed three petitions. In its first petition, Cox asks the Commission to issue a declaratory judgment that the Commission will arbitrate the interconnection terms and conditions between Verizon Virginia and Cox, "proposed conditionally by Cox," pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"). If the Commission grants such a declaratory judgment, Cox states that it "would then request that the Commission accept Cox's conditional petition for arbitration" -- Cox's second petition -- and proceed to arbitrate the unresolved issues pursuant to the Act. Failing that, Cox asks that its petition for arbitration be dismissed. Indeed, unless the Commission declares that it will conduct the arbitration pursuant to the Act, Cox states that it "finds itself unable to submit to the jurisdiction of this Commission for purposes of arbitration" Thus, Cox has asked the Commission not to assume jurisdiction over its petition for arbitration unless and until Cox receives a favorable ruling on its petition for declaratory judgment.

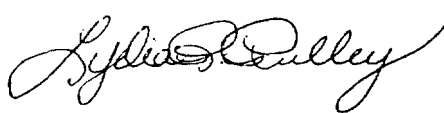
Section 252(b)(3) of the Act requires that Verizon Virginia provide any response to petitions for arbitration within 25 days after the Commission receives the petition. There is no statutory requirement, however, that Verizon Virginia respond to conditional petitions for arbitration. Because Cox has asked the Commission not to consider its petition for arbitration until the Commission resolves Cox's petition for declaratory

Joel H. Peck, Clerk
August 16, 2000
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judgment, at this point, Section 252(b)(3) has not been triggered. Moreover, a response at this time, when Cox's petition for arbitration is still conditional, and may never be considered by this Commission, would serve no useful purpose. Accordingly, Verizon Virginia hereby notifies the Commission and Cox that it will respond as provided by Section 252(b)(3) if and when the condition specified by Cox is satisfied and Cox's petition for arbitration becomes effective.

Please let me know if you have any questions regarding this matter, or if the Commission believes Verizon Virginia should proceed otherwise. Thank you.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lydia R. Pulley". The signature is fluid and elegant, with the first name "Lydia" being more prominent than the last name "Pulley".

Lydia R. Pulley

Copy to:

William Chambliss
Don R. Mueller, Esquire
Robert M. Gillespie, Esquire
Office of the Attorney General
All Interested Parties on Service List

CHRISTIAN & BARTON, L.L.P.

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September 11, 2000

VIA HAND DELIVERY

Mr. Joel H. Peck, Clerk
State Corporation Commission
Document Control Center
Tyler Building, 1st Floor
1300 East Main Street
Richmond, VA 23219

**RE: Petition of
Cox Virginia Telcom, Inc., Requesting Party
v.
Bell Atlantic-Virginia, Inc., Responding Party**

**For declaratory judgment and conditional petition
for arbitration of unresolved issues by the State
Corporation commission pursuant to Section 252
of the Telecommunications Act of 1996 or
alternative petition for dismissal.**

Dear Mr. Peck:

Enclosed for filing are an original and fifteen (15) copies of *Comments* on behalf of Cox Virginia Telcom, Inc. in the above-captioned matter.

Also enclosed is an additional copy of the Comments. Please file-stamp and return that copy to our messenger. Thank you for your assistance.

Sincerely,


Robert M. Gillespie

Enclosure

cc: Service list
Donald L. Crosby
Jill N. Butler

534042

COMMONWEALTH OF VIRGINIA
BEFORE THE STATE CORPORATION COMMISSION

Petition of

COX VIRGINIA TELCOM, INC.,
Requesting Party,

v.

Case No. PUC00_____

BELL ATLANTIC-VIRGINIA INC.,
Responding Party

For declaratory judgment and conditional
petition for arbitration of unresolved issues by the
State Corporation Commission pursuant to
Section 252 of the Telecommunications
Act of 1996 or alternative petition for dismissal.

COMMENTS OF
COX VIRGINIA TELCOM, INC.

Cox Virginia Telcom, Inc. ("Cox"), by counsel, pursuant to 20 VAC 5-400-190.C.3, files these comments on the August 16, 2000, letter submitted by Verizon Virginia, Inc. ("Verizon"), formerly Bell Atlantic-Virginia, Inc., to the State Corporation Commission ("Commission") in the above-captioned proceeding.

The Verizon letter is silent with respect to Cox's petition for a declaratory judgment that the Commission's arbitration shall be conducted pursuant to Section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* ("the Act"). As a result, neither Cox nor the Commission is apprised of Verizon's position on this question. However, gleanings whatever guidance is available from the letter, the Commission should note that Verizon makes reference exclusively to federal law. A reasonable inference is

that Verizon would not object to a grant by the Commission of the declaratory judgment requested by Cox. Indeed, this is consistent with Cox's understanding throughout negotiations that Verizon intended for the renewal interconnection agreement to comport with both state and federal law.

As stated in its initial pleading, Cox prefers to follow the procedures established in the Act and under Virginia law for arbitrating this matter under the auspices of the Commission. The protocol set up by the Act calls for arbitration before the State Commissions, with the Federal Communications Commission ("FCC") handling those duties only in a circumstance where a state commission does not act. Cox has come first to the Commission for arbitration in accordance with the Act's dictates. It will only be necessary for Cox to invoke the FCC's arbitration procedures if necessary to protect its federal rights.

As to the arbitration itself, Verizon has elected not to comply with the response filing requirements of state and federal law. *See* 47 U.S.C. § 252; 20 VAC 5-400-190.C.2. Rather, Verizon takes the position that, since Cox titled its pleading a "Conditional Petition for Arbitration" and not a "Petition for Arbitration," Verizon is somehow relieved of its response filing obligations. According to Verizon, it is free to await the issuance of the Commission's declaratory judgment before participating in this docket. This violation of 20 VAC 5-400-190.C.2 potentially disrupts the Commission's process for handling arbitration proceedings in an orderly and timely fashion. The administrative efficiency of this process can be seen in its penalties for failure to comply with its filing requirements. *See, e.g.*, 20 VAC 5-400-190.A.5 ("Failure to file supporting documentation or evidence as required by this section may result in denial of the relief

sought by the party failing to comply, or in a decision adverse to that party's position on the merits.").

Cox disagrees with Verizon's allegation that "no useful purpose" would be served by its compliance with 20 VAC 5-400-190.C.2 and the federal response filing requirements. In addition to informing the Commission and Cox of its position on the requested declaratory judgment, Verizon's response would expedite the arbitration proceeding, irrespective of whether the Commission or the FCC ultimately conducts the proceeding. If the Commission declares that this arbitration will be conducted pursuant to the combination of federal and state law, Cox is prepared to proceed with arbitration before the Commission. In such an event, unless the Commission were to invoke the penalty provisions of 20 VAC 5-400-190.A.5, Verizon's "wait-and-see" approach would obstruct any effort by the Commission to comply with the Act's nine-month deadline for decisions by state commissions. Alternatively, should the Commission decide to proceed exclusively pursuant to state law (in which case Cox would request a definitive statement that it will take no action on Cox's pleading), the lack of Verizon's response would potentially delay the FCC's timetable for arbitrating the contested issues.

Respectfully submitted,

COX VIRGINIA TELCOM, INC.

By Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2000, a copy of the Comments was served by hand or first class mail, upon each of the following.


Robert M. Gillespie

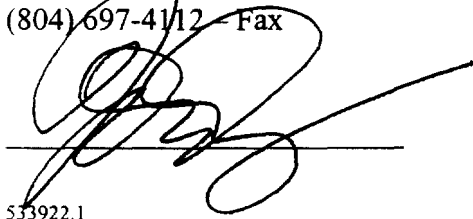
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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 1, 2000

PETITION OF

COX VIRGINIA TELCOM, INC.,
Requesting Party,

CASE NO. PUC000212

v.

VERIZON VIRGINIA INC. f/k/a
BELL ATLANTIC-VIRGINIA INC.,
Responding Party

For declaratory judgment and
conditional petition for arbitration
of unresolved issues by the State
Corporation Commission pursuant to
Section 252 of the Telecommunications
Act of 1996 or alternative petition
for dismissal

ORDER OF DISMISSAL

On July 27, 2000, Cox Virginia Telcom, Inc. ("Cox"), filed
its Petition for Declaratory Judgment and Conditional Petition
for Arbitration or Alternative Petition for Dismissal
("Petition"). The Petition first requests the Commission to
issue a declaratory judgment that the requested arbitration of
interconnection terms and conditions between Cox and Verizon
Virginia Inc. f/k/a Bell Atlantic-Virginia Inc. ("Verizon
Virginia"), proposed conditionally by Cox, shall be conducted by
this Commission pursuant to Section 252 of the
Telecommunications Act of 1996, 47 U.S.C. § 151, et seq. ("the

Act"). If the Commission should not grant the declaratory judgment sought, then Cox requests that its Petition be dismissed.¹

Verizon Virginia, by counsel, filed a letter in response to the Cox Petition on August 16, 2000, averring that it was under no duty to respond in conformance with the requirements of Section 252(b)(3) of the Act because the Petition conditionally requested this Commission to arbitrate an interconnection agreement under the Act. Verizon Virginia maintains that the Act does not speak to conditional petitions, and that as the non-petitioning utility, Verizon Virginia is under no duty to file a response to Cox's conditional petition to arbitrate.

Cox filed comments on September 11, 2000, responding to Verizon Virginia's letter filed August 16, 2000. Cox points out in its comments that Verizon Virginia has filed no objection to the judgment sought by Cox declaring that the Commission proceed under the Act to arbitrate the interconnection agreement between Cox and Verizon Virginia. Cox also alleges in its comments that Verizon Virginia has failed to comply with our rules implementing Section 252 of the Act, 20 VAC 5-400-190 C 2.

¹ Cox seeks an express statement in the dismissal by this Commission "that it will neither take action on Cox's Conditional Petition for Arbitration nor act to carry out the responsibilities of State commissions under 47 U.S.C. § 252, so that the Federal Communications Commission ("FCC") might take jurisdiction over this arbitration pursuant to 47 U.S.C. § 252(e)(5). . . .".

The Commission finds that it cannot rule on the declaratory relief sought by Cox as such ruling might be considered an exercise of jurisdiction under the Act and, therefore, a waiver of the Commonwealth's sovereign immunity. We recognize that the attention drawn by Cox (i.e., its petition for declaratory judgment) to this jurisdictional matter is simply to anticipate being given the same choice offered to Cavalier Telephone, LLC, by our Order of June 15, 2000, in Case No. PUC990191. There, we allowed Cavalier either to pursue the resolution of interconnection issues under state law or to take its petition for arbitration under the Act to the Federal Communications Commission ("FCC").

As discussed in our Order of June 15, 2000, in Case No. PUC990191,² the Commission has authority under state law to order interconnection between carriers operating within the Commonwealth, and § 56-38 of the Code of Virginia authorizes us, upon request of the parties, "to effect, by mediation, the adjustment of claims, and the settlement of controversies, between public service companies, and their employees and patrons." Further, our rules codified at 20 VAC 5-400-180 as "Rules Governing the Offering of Competitive Local Exchange Telephone Service" anticipate that we would address

² Petition of Cavalier Telephone, LLC, For arbitration of interconnection rates, terms and conditions, and related relief, Document Control Center No. 000630199.

interconnection issues under the authority of the Virginia Code. Rules 20 VAC 5-400-180 F 5 and 6 specifically provide for our "arbitration" of contested matters. We stand ready to arbitrate this matter pursuant to these state authorities should Cox so request.

However, as evidenced by its Petition, Cox prefers to proceed with its arbitration of unresolved issues with Verizon before the FCC under the Act rather than before this Commission pursuant to 20 VAC 5-400-180 F 6 and other state authority. Cox has requested dismissal of its Petition in the event that this Commission does not proceed under the Act. We note that under present controlling federal authority,³ any action taken by us pursuant to 252(b) of the Act effects a waiver of the sovereign immunity of the Commonwealth. We previously have found no authority, and the parties here have suggested none, that would empower us to waive the Commonwealth's constitutional immunity from suit under the Eleventh Amendment to the U.S. Constitution. Until the issue of Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States,⁴ we will not act solely under the Act's federally

³ See GTE South Inc. v. Morrison, 957 F. Supp. 800 (1997); GTE South Inc. v. Morrison, 6 F. Supp. 2d 517, aff'd., 199 F. 3d 733 (4th Cir. 1999); AT&T of Virginia v. Bell Atlantic-Virginia, Inc., 197 F. 3d 663 (4th Cir. 1999).

⁴ The 4th Circuit currently has pending before it a case involving sovereign immunity, BellSouth Telecommunications, Inc. v. North Carolina Utilities

conveyed authority in matters that might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms, and conditions of interconnection agreements between local exchange carriers.

Therefore, we will grant Cox's alternative request to dismiss this Petition so that it may proceed before the FCC. If Cox does proceed to the FCC, it shall be the responsibility of Cox to serve copies of all pleadings filed herein upon the FCC.

Accordingly, IT IS ORDERED THAT:

(1) This case is hereby dismissed pursuant to the laws of the Commonwealth of Virginia, without prejudice, consistent with the findings above. This Commission will not arbitrate the interconnection issues under federal law for the reasons given above.

(2) There being nothing further to come before the Commission this case is closed.

Commission, No. 99-1845(1), which was argued May 1, 2000. As of the date of this Order, the 4th Circuit has not ruled on this matter.